

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Investigation by the Department of Telecommunications and Energy, to)
establish a surcharge to recover prudently incurred costs associated with)
the provision of wireline Enhanced 911 services, relay services for) D.T.E. 03-63
TDD/TTY users, communications equipment distribution for people with)
disabilities, and amplified handsets at pay telephones.)

HEARING OFFICER MEMORANDUM
RE: PROCEDURAL SCHEDULE; GROUND RULES; AND SERVICE LIST

I. PROCEDURAL SCHEDULE

On June 25, 2003, the Department of Telecommunications and Energy ("Department") held a public hearing in the above-captioned proceeding.

A. Intervention and Motions Pro Hac Vice

At the public hearing, the Department granted the following petitions to intervene:

Allegiance Telecom of Massachusetts, Inc.
AT&T Communications of New England, Inc.
Broadview Networks, Inc.
Comcast Phone of Massachusetts, Inc.
Conversent Communications of Massachusetts, LLC
Global NAPs, Inc.
Massachusetts Communication Supervisors Association
Sprint Communications Company L.P.
Statewide Emergency Telecommunications Board ("SETB")
Verizon New England Inc. d/b/a Verizon Massachusetts ("Verizon")

In addition, the Department received a notice of intervention from the Attorney General. At the public hearing, the Hearing Officer also granted the Motions Pro Hac Vice of Scott Sawyer (of Conversent Communications of Massachusetts, LLC), Craig Dingwall (of Sprint Communications Company L.P.), Andrew Klein of Kelley Drye & Warren LLP (representing Broadview Networks, Inc.), and Mary Albert (of Allegiance Telecom of Massachusetts, Inc.).

B. Procedural Schedule

The schedule for the remainder of Phase I (Interim Surcharge) is as follows:

Reply Comments due: Monday, June 30, 2003

Discovery Responses due: Thursday, July 3, 2003

The procedural schedule for Phase II (Permanent Surcharge) will be established once the final regulations are in place.

II. SERVICE LIST

A service list for D.T.E. 03-63 has been attached to this Hearing Officer Memorandum.

III. GROUND RULES

This proceeding shall be conducted in accordance with the provisions of G.L. c. 30A and 220 C.M.R. §§ 1.00 et seq., the Procedural Rules of the Department. In addition, the following ground rules shall apply to the conduct of the proceedings in this matter:

1. Electronic Filing

The original of all documents filed with the Department must be filed with Mary Cottrell, Secretary, Department of Telecommunications and Energy, One South Station, Second Floor, Boston, MA 02110. In addition, copies of all documents that are filed with the Department, including letters, comments, pleadings and briefs, but excluding discovery and responses to discovery, must be submitted to the Department in electronic format by e-mail attachment to dte.efiling@state.ma.us and Joan.Evans@state.ma.us. Discovery and responses to discovery must also be provided in electronic format by e-mail attachment to Joan.Evans@state.ma.us. The text of the e-mail must specify: (1) an easily identifiable case caption; (2) the docket number (D.T.E. 03-63); (3) name of the person or company submitting the filing, and (4) a brief descriptive title of document (e.g., comments or petition to intervene). The electronic filing should also include the name, title and phone number of a person to contact in the event of questions about the filing. Text responses should be written in either Word Perfect (naming the document with a ".wpd" suffix) or in Microsoft Word, (naming the document with a ".doc" suffix). Data or spreadsheet responses should be compatible with Microsoft Excel. Documents submitted in electronic format will be posted on the Department's Website, <http://www.state.ma.us/dpu/>.

The Hearing Officer will communicate with the parties primarily via email, with paper to follow where appropriate.

2. Information Requests

Information requests are prehearing discovery in the nature of interrogatories and requests for documents (Mass. R. Civ. P. 33, 34). Responses to information requests will not be part of the record unless marked and admitted into evidence.

Parties shall make a good faith effort to provide responses to information requests within 10 business days of receipt of the request, unless otherwise indicated. Responses should be provided on a "rolling" basis, as soon as they are completed. This time for responses to information requests shall not apply where the established procedural schedule sets a different time. The parties must first attempt resolution of any discovery dispute before coming to the Department for assistance.

Information requests shall be deemed continuing so as to require further supplemental responses if a party or its witnesses receive or generate additional information within the scope of the requests between the time of the original request and the close of the record in the proceeding.

For purposes of discovery, a document shall be deemed to include writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which data can be obtained, or translated, if necessary, by the respondent through detection devices into reasonably usable form.

With regard to bulk responses (responses in excess of 100 pages), parties seeking copies of such responses must make an affirmative request to the responding party.

Verizon and the SETB shall provide to the Department and all intervenors a list, updated on a weekly basis, of all information requests issued; where a response has been provided, the Company shall indicate the date of each response, and the name of the individual responding.

3. Exchange of Materials

The parties shall make arrangements for the expeditious exchange of materials, particularly discovery material, through the use of hand delivery, facsimile transmission ("FAX"), or other speedy means of delivery. Parties shall also exchange all materials electronically where feasible to do so. Unless otherwise not feasible, the use of mail delivery should be avoided in the exchange of discovery material. Where material is delivered by means of FAX, a follow-up copy of the material must be otherwise delivered (use of mail delivery may be appropriate).

Where information requests are sent to a party by means of FAX, the FAX must be accompanied by telephone notification of the transmission. Failure to make prompt telephone notification may affect the timing of the response to the information request.

4. Record Requests

Responses to record requests are written substitutes to oral answers where fault of memory or complexity of subject precludes a responsive answer by the witness in the hearing. As such, they are part of the record and the evidence, unless challenged as unresponsive and expunged in whole or part. Record requests shall not be used as a substitute for discovery or as a substitute for re-direct examination.

The ordinary time for response will be the fifth Department working day following the day on which the request is made. Objections to record requests shall be made at the time the request is made, and in no event later than the end of the next Department working day.

5. Protected Material

Where information or material is sought that is considered proprietary or protected by one party, the parties should discuss the use of a non-disclosure agreement before coming to the Department for protection or compelled submission.

The Department will make a reasonable effort to extend protection where appropriate within the requirements of the law and in consideration of the policy interests regarding public access. A party requesting proprietary treatment must submit its request in writing in a motion and state the reasons therefore. Each page of the document for which a party is seeking protective treatment should be marked as such. The party seeking such treatment has the burden to demonstrate that the materials should be afforded the treatment requested in light of the presumption that such information is a public record.

6. Format of Document Filings

All documents offered as exhibits shall be accurately punched to fit a standard three-hole binder. All documents shall be accompanied by a cover letter describing the filing, indicating if the document is a revision or supplement to a previous filing and noting the distribution of copies.

All discovery documents must be filed according to the instructions in sections 10 and 11, below. In addition, all discovery documents must be provided electronically to the Hearing Officer. Text should be provided in WordPerfect 6.0 (or higher) format, spreadsheets in Excel 5.0 (or higher).

Responses to information and record requests shall contain the following information: (1) set and question number, (2) recitation of request, (3) identity of person who will support the response and (4) whether the response revises or supplements an earlier response.

7. Offering of Exhibits

The proponent of an exhibit must offer the Department three bench copies of the proposed exhibit (standard three-hole punch). Nonconforming documents will not be marked. Where material exceeding 25 pages is offered for marking and such material is already in the possession of all parties (e.g., information request responses), the proponent may, no later than 9:00 a.m. on the day the material is to be offered for marking, inform all parties and the Hearing Officer of the intended use of such materials. Nonetheless, the proponent of any such document must provide the Hearing Officer with a three-hole punched copy for marking.

If only a part of a document is offered for marking and another party wishes to use the omitted part(s) in questioning or on brief, then that party must enter the missing part(s) into the record.

Before the close of hearings, each party that offers exhibits shall submit a listing for those exhibits that presents (1) the exhibit number, (2) the date marked and (3) a description of the exhibit.

8. Late-Filed Exhibits

Exhibits offered after the close of the hearings, if objected to by any party, labor under a heavy burden of untimeliness, for they would not be subject to cross-examination or rebuttal. Late filed exhibits must be accompanied by a motion to reopen the record and supported by appropriate affidavits. Only for good cause shown, in the face of an objection, will such exhibits be marked and admitted into evidence.

9. Exhibit Format

Documents submitted as exhibits shall be premarked by the parties using the following format, in the upper right-hand corner of each exhibit:

D.T.E. 03-63
Exhibit ____
Date ____
H.O. Evans

Any exhibit offered in this proceeding must contain an internally consistent and usable form of referencing. While most documents that are offered as exhibits have pre-numbered pages, some offered exhibits (especially those exhibits consisting of

excerpts from more than one document or consisting of a compilation of notes) have pages that are not numbered or are not consistently numbered.

Documents of three pages or more without a preexisting referencing system must be marked with consecutive page numbers before the document is offered as an exhibit or before it is otherwise distributed for use in the hearing. Where it is necessary to supply page numbers for an exhibit, the proponent of the exhibit should add the numbers in some way that differentiates the additions from the preexisting text and should identify his method of addition on the record upon presentation for marking.

Documents without an acceptable referencing system will not be marked for identification and may not be used at the hearing.

10. Number of Copies

The Department requires copies to be filed in the following numbers:

Prefiled Testimony - 1 original and 4 copies

Information Requests - 1 original and 4 copies

Responses to Information Requests - 1 original and 4 copies

Responses to Record Requests - 1 original and 4 copies

Bulk Responses (100 pages or more) - 1 original and 1 copy

Pleadings, Briefs, Motions, Memoranda - 1 original and 4 copies

11. Address of Filings

The original of all filings must be filed with Mary Cottrell, Secretary, Department of Telecommunications and Energy, One South Station, Second Floor, Boston, MA 02110. The original of all documents filed with the Department must be filed with Mary Cottrell by the end of business (5:00 p.m.) on the respective due date. One (1) copy of all non-bulk filings and one (1) copy of all bulk filings must be submitted to Joan Foster Evans, Hearing Officer. Where four (4) are required under these ground rules, two (2) copies must be submitted to Joan Foster Evans, Hearing Officer, and one (1) copy each must be submitted to Michael Isenberg, Director, Telecommunications Division, and April Mulqueen, Assistant Director, Telecommunications Division. Where there are additional copies of a filing are required, all extra copies should be sent to Joan Foster Evans, Hearing Officer.

12. Communications with the Department

All communications by the parties with the Department staff shall be made through the Hearing Officer.

13. Hearing Arrangements

Evidentiary hearings will be conducted at the offices of the Department at One South Station, Boston, Massachusetts. These hearings will begin each day at 10:00 a.m., according to the established schedule, unless otherwise indicated by a Hearing Officer. Adjustments to the stated hearing arrangements may be made at the discretion of the Hearing Officer.

These ground rules are deemed consistent with the orderly conduct of this proceeding. Exceptions to any ground rule may be made by the Hearing Officer for good cause shown. The Department may revise these ground rules during the course of the proceeding.

June 26, 2003
Date

Joan Foster Evans
Hearing Officer

cc: Mary L. Cottrell, Secretary
Paul Afonso, General Counsel
Michael Isenberg, Director, Telecommunications Division
April Mulqueen, Assistant Director, Telecommunications Division
Service List